

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Regulation of Prepaid Calling Cards)	WC Docket No. 05-68

COMMENTS

DJE Teleconsulting, LLC, hereby offers comments in response to the Commission's "Order and Notice of Proposed Rulemaking" (FCC 05-41), released February 23, 2005 (NPRM).

The NPRM was initiated concurrent with the Commission's determination that AT&T Corp. ("AT&T") unlawfully avoided paying over \$500 million in regulatory costs over several years in connection with its prepaid calling card service. AT&T failed to persuade the Commission that its offering was an "information service" not subject to regulation, including universal service contributions and access charge payments. However, it proposed two service "variants" that it was considering, arguing that these would render its prepaid calling card service unregulatable.¹

In the first variant, the customer is given an announcement message that offers several "messages" relating to the business of the seller of AT&T's prepaid

¹ *See ex parte* Letter from Judy Sello, Senior Attorney, AT&T, to Marlene H. Dortch, FCC, dated November 22, 2004 ("Sello Letter").

card, *e.g.*, Wal-Mart.² One of the available “options” would allow the customer to bypass the advertising messages and choose to place a call or, if no message were chosen by the customer, to default to dial-tone for call placement.³ The second variant involves the use of an Internet backbone network using IP technology to complete calls. The two variants would be offered separately or in combination. In either case, however, the prepaid calling card service -- otherwise regulatable telecommunications -- would not be subject to regulation, including universal service and access charge payment obligations.

The regulatory costs associated with telecommunications are substantial. Universal service contribution requirements, for example, now exceed ten percent of the amounts billed by carriers for interstate and international services. To escape those costs would result in substantial cost savings that not only “go to the bottom line” but also render the avoiding carrier more competitive in the marketplace, particularly if substitutable services were burdened with these costs. Accordingly, there are compelling motives for carriers to attempt to steer their service offerings into the “unregulated” category.

Consumers purchase prepaid service calling cards to make telephone calls, usually from locations where calls would be more expensive to place by other means, *e.g.*, operator service providers. It is fair to say they do not acquire the cards to listen to marketing messages from the entities from whom they purchased the cards. In addition, carriers offer no capability to their customers with respect to the advertising messages, which plainly are incidental to the

² See NPRM at Para. 38.

³ Sello Letter at 3.

furnishing of the underlying telecommunications service.⁴

Rather than simply “broadcasting” a marketing message, which the Commission determined did not alter the regulatory status of a service, this variant would allow consumers to choose and listen from among several such marketing messages. AT&T apparently believes this new wrinkle renders the offering an “information service” under 47 U.S.C. Sec. 153 (20) or an “enhanced service” under 47 C.F.R. Sec. 64.702(a). However, the problem -- in addition to the fact that consumers simply don’t purchase prepaid service calling cards to listen to marketing messages -- is that the default mechanism described by AT&T does not ever require the customer to choose a message, *i.e.*, interact with stored information, to accomplish what the calling card was purchased for, namely, to make telephone calls. Accordingly, the first variant is not materially different from the one the Commission concluded did not create an unregulatable service.

The second variant – using IP technology to complete calls – does not render prepaid calling card service unregulatable for reasons recently articulated by the Commission. *See Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004).) Prepaid calling card services that use “IP in the middle” -- with ordinary CPE and the public switched telephone network for call origination and termination, and without net protocol conversion or any enhanced functionality to end users as a result of the use of IP technology – do not constitute information or enhanced service offerings. In addition, AT&T’s

⁴ See NPRM at Para. 39.

attempt to treat “1+” and toll-free service dialing by consumers as materially important in ascertaining the regulatory status of a service is overreaching and amounts to little more than a distinction without a difference. Regulatory status should not be determined by whether a service is accessed and used via one form of dialing versus another.

If AT&T’s approach is accepted, such that it achieves the deregulation of its prepaid calling card service via one or both of the variants under discussion, other carriers will undertake to achieve regulatory parity with AT&T and thereby avoid the substantial costs associated with regulation. Available technology would be employed to “front-end” long distance telephone calling with “message options” that customers neither want nor need – and easily would be bypassed simply by awaiting default to dial tone.

Respectfully Submitted,

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